

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

ADLIFE MARKETING & COMMUNICATIONS
COMPANY, INC.

Plaintiff,

- against -

H-E-B, LP

Defendant.

Docket No. 5:18-cv-1220

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Adlife Marketing & Communications Company, Inc. (“Adlife” or “Plaintiff”) by and through its undersigned counsel, as and for its Complaint against Defendant H-E-B, LP (“H-E-B” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of Yukon Gold potatoes, owned and registered by Adlife, an advertising agency specializing in design, digital marketing, print advertising and photography. Accordingly, Adlife seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or transacts business in Texas.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Adlife is an advertising agency specializing in design, digital marketing, print advertising and photography having a usual place of business at 38 Church Street, Pawtucket, Rhode Island 02860.

6. Upon information and belief, H-E-B is a domestic limited partnership duly organized and existing under the laws of the State of Texas, with a place of business 646 S Main Ave, San Antonio, TX 78204. Upon information and belief H-E-B is registered with the Texas Department of State Division of Corporations to do business in the State of Texas. At all times material, hereto, H-E-B has owned and operated a website at the URL: www.heb.com (the “Website”).

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photograph

7. Adlife is the copyright holder of a photograph of Yukon Gold potatoes (the “Photograph”). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Adlife has at all times been the sole owner of all right, title and interest in and to the Photographs, including the copyright thereto.

9. The Photograph was registered with the United States Copyright Office and was given registration number VA 2-020-735 and titled “YukonGoldPotatoesHR0801, 07-15-1994.” See Exhibit B.

B. Defendant's Infringing Activities

10. H-E-B copied the photograph and used it on the Website to sell Yukon Potatoes. See URL <https://www.heb.com/product-detail/fresh-yukon-gold-potatoes/319020>. The Website prominently featured the Photograph. A screenshot of the Photograph on the Website is attached hereto as Exhibit C.

11. H-E-B did not license the Photograph from Plaintiff for its advertisement, nor did H-E-B have Plaintiff's permission or consent to publish the Photograph on its Website.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST DEFENDANT)
(17 U.S.C. §§ 106, 501)

12. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-11 above.

13. H-E-B infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website. H-E-B is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

14. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

15. Upon information and belief, the foregoing acts of infringement by Defendant have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

16. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

17. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photograph, pursuant to 17 U.S.C. § 504(c).

18. Plaintiff further is entitled to his attorney's fees and full costs pursuant to 17 U.S.C. § 505.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant H-E-B be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. That Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
5. That Plaintiff be awarded pre-judgment interest; and
6. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
November 25, 2018

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